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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,506	11/07/2006	Antonella Bogoni	4015-5815	4215
24112	7590	11/27/2007	EXAMINER	
COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518			HELLNER, MARK	
			ART UNIT	PAPER NUMBER
			3663	
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			11/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/571,506

Applicant(s)

BOGONI ET AL.

Examiner

Mark Hellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-40 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14-26 of copending Application No. 10/542,296 in view of Allan et al. Claims 14-26 of 10/542,296 recite the inventive concept of using a lasing signal in the ASE band to control gain in a WDM loop that includes EDFAs. Claims 21-40 of the present application are different for merely claiming known structure of WDM loops. This type of structure is shown by the conventional WDM loop disclosed by Allan et al

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21-27, 37, 38 and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al.

Lee et al disclose a WDM loop comprising: a plurality of nodes (14a to 14d) connected with a plurality of waveguides (12) to form a loop, the loop including optical amplifiers (OA) between sections of the loop.

Column 5, lines 30 to 45 teach the use of a lasing signal within the ASE band in order to control gain in the loop during a line failure.

This teaching combined with the structure of the loop broadly reads on claims 21-27, 37, 38 and 40.

Response to Arguments

Applicant's arguments filed 09/11/2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments counter to the rejection of claims 21 – 40 for obviousness type double patenting, it is noted that claim 20 of 10/542,296 recited "means for positioning a gain peak at a wavelength outside of a band of channels

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transmitted along the ring, the wavelength corresponding to amplified spontaneous emission ASE”.

A person of ordinary skill in the art would have been motivated by the teaching to use the link control laser recited by claims 21 - 40 of the present application.

Applicant's arguments with respect to the rejection of claims 21-27, 37 , 38 and 40 are noted.

However, it is the Examiner's position that these arguments are not supported by the limitations recited.

Figure 10 of Lee et al that the configuration of the switches (SW) in the nodes (14c and 14d) creates a lasing loop (20) within the whole structure of figure 10.

This structure reads on a link control laser configured to inject laser radiation around a link wavelength into the loop at a point in the loop where it is desired that a lasing peak be generated and allowed to circulate.

Attention is drawn to column 5, lines 34 – 39 which state: “If the loop gain of the closed loop 20 is larger than 1, then some of the wavelength of Amplified Spontaneous Emission (ASE) noise generated in the optical amplifiers (OA) obtain a significant gain and a lasing begins.”

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mark Hellner at telephone number 571 272 6981.

Mark Hellner

Primary Examiner

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A handwritten signature in black ink, appearing to read "Mark Hellner", with a stylized flourish at the end.